

Registered charity status: a social contract

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Dame Julia Unwin's first speech as Chair of the Charity Commission at the Civil Society Trustee Exchange in London.

Good afternoon,

And thank you everyone.

I am so pleased to be here with you this afternoon.

I see my role as Chair of the Charity Commission as representative in two directions – both representing the Commission to the sector but also assisting in the representation of the sector to the Commission. No regulator can thrive without regular engagement, formal and informal, with the sector it regulates, and the Charity Commission works hard to maintain that two-way flow of intelligence. I hope I can help – to represent the Commission and its work, but also, and crucially, to bring into the Commission the perspectives and views of those I meet outside its offices. Not least you, on whose shoulders as trustees the future and health of the charity sector ultimately rests.

I will of course take questions from the floor, and I'll also be around for the afternoon, so please do come and find me – tell me what's going on in your organisations, what inspires you, what keeps you up at night, and what you'd like to see from the Commission.

I will use my time to walk with you across some of the terrain we share – because while your organisations may be very different in size, purpose and geography, I believe we are all, and that includes the Charity Commission, tending the same land.

Straitened financial context

I took up the role as Chair of the Charity Commission around four months ago.

In some ways, it was a coming home – I served as a Commissioner for five years in the late 1990s, a period, much like ours, when questions were being asked about the meaning of charity, its proper role in a changing society, and the functions of the Commission. Eventually, of course, that led to the work that culminated in the Charities Act 2006, a significant, once-in-a-generation recalibration of the relationship between charity, government, and the people.

We may not be heading for a fundamental legislative review – though incremental improvements to the framework will always continue – but we are living through a time of dizzying change, and, for many charities, of great challenge.

Over recent years, many charitable institutions that once seemed tightly woven into the tapestry of our communities have announced significant restructures, cuts or indeed, closures.

Having spent a lifetime working with and for mission-led organisations, I know of the impact of uncertainty and economic challenge first hand, and will never minimise, downplay or smooth over the strain and precarity that many in the sector are experiencing. Not for the first time what is happening in charities reflects and amplifies what is happening in wider society – deep divisions, profound uncertainty and real fear.

Registered charity status as social contract

But shifting landscapes also offer opportunity. The chance, perhaps the necessity, to return to first principles, and ask: what are we here for, and how do we best achieve the outcomes we strive for, in the circumstances we are thrown into?

This applies not only to individual organisations, but to charities collectively, and crucially to the Commission, as both regulator and registrar.

In this context, I want to suggest that registered charity status is best understood as a form of social contract, a kind of common treasure, not owned by any one of us, but sustained by all of us, and from which we all benefit.

I welcome the government's Civil Society Covenant, spelling out the relationship between government and the sector – both the language, and the intentions of the covenant capture something important.

The social contract I am talking about is both narrower – focusing specifically on registered charities – and wider. Recognising that the relationship of charities is not only to government, it is to wider society.

Civil society is the third pillar of our society. Alongside government and our elected democracy (both local and national) and the business sector, civil society shapes, represents and contributes to who we are as a society. It is so much more than a collection of services.

The rich dense network of organisations we described in the Civil Society Futures work I led before the pandemic is the ecosystem on which our country depends. From household names to local allotment societies, from the biggest cultural organisation to community choirs, it is civil society which holds the tensions in our society, and also provides the means to respond.

By framing charity a social contract, I mean something quite concrete.

In return for the trust, legitimacy and material privileges that society confers on registered charities, there are expectations – not only of probity and lawfulness, but of stewardship, restraint and seriousness of purpose.

Trustees accept exceptional responsibility.

The public accepts that charity will sometimes challenge, discomfort or disappoint; and the Commission accepts its role as both supporter and enforcer of the framework that makes this possible.

Not all charities survive. Nor should they. Not all charities get it right. Of course they don't.

The fluidity and change in the sector is vital to its contribution. The establishment of a new charity is founded in hope and optimism.

Some charities were formed in just this way decades ago and continue to thrive. Others start and fail. Some were hugely controversial at inception and are now part of our social fabric.

That's part of the social contract. Charities formed in order to protect and preserve. Charities formed to change things.

Like all contracts, this one is tested under pressure.

My argument today is that sustaining a healthy charity sector depends on all of us understanding our respective parts in that settlement, taking the long view and resisting the temptation to redraw it unilaterally when outcomes do not in the moment suit us.

Role of trusteeship and good governance

I'll start with something essential, namely that those involved in charities must continuously demonstrate its distinctiveness.

It is no longer the case that we can instantly, and from a distance, tell apart what is a charity and what isn't. Social enterprises, Community Interest Companies and in some cases old-fashioned profit-making business often co-opt the language and 'feel' of charity.

And there are registered charities that, in some ways, can be difficult to distinguish from public bodies, or businesses.

How many people using healthcare services know that the organisation regulating their nurse or doctor is a charity or that the maintenance of historic landmarks in their town is likely to be done by a registered charity?

This arguable blurring of the optical boundaries is not in my view a problem.

But it does require a conversation about what is, actually, distinct, about charity.

I believe part of the answer lies in governance.

Both the structure of charity governance – the board of non-executive trustees, with ultimate responsibility.

And the quality of governance – principally the extent to which trustees are making sound decisions driven exclusively by the charity's purposes.

Single minded commitment on mission for the public benefit is a crucial way of demonstrating that the label of charity is one that can be trusted.

Without that discipline, the privileges of charity status begin to look arbitrary, and the case for protecting them weakens.

This does not mean that charity governance models must remain frozen in ice over centuries.

I welcome vibrant, open discussion about charity governance for the 21st century.

Innovation and experimentation can be vital routes to finding better and more effective ways of doing things, as times and circumstances change.

But we must ensure that any change is judged by what it does to strengthen governance, by the impact it has on public trust and confidence in charity, and its distinctiveness, and above all, what it does to ensure public benefit.

Charities uphold the social contract not just through having charitable purposes, but by being run with the highest standards of integrity.

And that must remain the case, and visibly so, into the future.

Function of the Commission's online guidance

The responsibility for good governance of course ultimately lies with trustees.

And the concept of a social contract implies that these heavy responsibilities also come with a return, and with support.

A contract that only ever punishes breaches, without helping people to comply, will not endure.

Which is why the Commission as regulator places great emphasis on supporting trustees to get it right.

I've been delighted to notice that one of the things that has improved over the years since I was last involved is the Commission's approach to regulatory guidance and support. We now recognises that, as regulator, we must meet trustees where they are in providing regulatory guidance and support.

We cannot expect trustees to speak fluent Latin or have the time to digest tens of thousands of words of guidance whenever they need a steer.

I welcome the programme of reviewing the full suite of guidance - improving its accessibility and making it easier to use and action in the moment.

Most recently, last week we published refreshed conflicts of interest guidance - one of the most important pieces of our guidance. It is half the length of the previous version, without losing meaning or nuance, and is created to be practical and actionable. Please do look at it.

Over the next three years, we will also be investing in our digital services to make them more user friendly and efficient. This will include work to better tailor our communications with trustees, so that you receive the information you need, when you need it.

Trustees have a legitimate expectation of feeling supported in getting it right, not just held to account when things go wrong.

Recognising charity trusteeship

If trusteeship is one of the core obligations within the social contract of charity, then it follows that it must also be visible, valued and renewed.

The Commission and all those involved in charities must work to celebrate and promote the work that trustees do.

We should aim for trusteeship to be acknowledged as one of the most important and impactful services a citizen can offer their community and society.

And we should shout about the rewards involved.

Large scale research on trusteeship carried out last year for the Commission by Pro Bono Economics found that the vast majority of trustees are "immensely positive" about their experience. 8 in 10 trustees would recommend the role to others. Most trustees feel positive about board dynamics, and their relationships with staff and volunteers.

This is a great story, but it's not being told well enough. And the good news should never be used to mask the very real challenges and tensions so many trustees report.

Charities themselves, individually, collectively, can make a difference here.

I was saddened but not surprised, for example, to learn that the research just mentioned found that most trustees are appointed through personal contacts rather than via open recruitment channels. Only 6% of trustees surveyed had applied for their job via an advert.

That is a great loss. It prevents people contributing, it narrows the mind sets of boards, and it deprives vital organisation of the best, independent engagement that a truly diverse board offers.

This of course, creates an ongoing barrier to widening the pool of trusteeship. And this matters. It matters because the best protection against risk is the 360 degree vision that you only get with a genuinely diverse board.

And it is also a missed opportunity to raise awareness of trusteeship – to explain what it means, entails, and the rewards the role brings.

So trusteeship and governance are hugely important to the social contract of registered charity status.

And something that will require continued work, nurture, investment.

Respect in the face of disagreement

One of the clearest places where the social contract of charity is now under strain is in how we handle disagreement.

My predecessor Mark Simms rightly raised concerns about the growing violence and aggression facing those involved in charities, from people who simply do not support the charity's work.

No charity is above criticism, and when a charity goes beyond what the law permits, the Commission as regulator must get involved.

But charities should not be expected to be cosy, uncontroversial, unpolitical.

Charities have always pursued controversial and contested causes. Supporting marginalised groups, promoting progressive causes, or indeed supporting causes that are considered by others as regressively conservative.

There is no common view within the charitable sector – and nor would you expect there to be one. Charities reflect the hugely diverse society we are. There are causes which are undeniably charitable which some of us would support. There are others we wouldn't but they remain charitable.

Because if as citizens we want to benefit from a healthy, rich, vibrant charity sector, we must also offer something in return.

Namely the willingness to work alongside people who feel and think differently about things that matter deeply to us.

The social contract of charity requires, in other words, for all of us to accept that we live in a world

with others. Not in a hall of mirrors, in which we see only ourselves, our views, sensibilities and prejudices reflected back.

We live in an age that, in many ways, engineers exactly that condition - where the platforms we use, the news we consume, and even the communities we choose to belong to, increasingly confirm rather than challenge what we already believe.

Charities, at their best, have always pushed against that tendency. They ask us to care about people and causes beyond our immediate horizon. They ask us to notice what we'd rather ignore, and they ask us to reflect on our own shortcomings and prejudices.

That is part of what makes them such a precious resource - and part of what makes them, at times, uncomfortable.

Those of us in this room here today cannot, alas, stop the violent attacks that some charities face from beyond the world of charity. Though we can, and we must, use every opportunity to say how deplorable these attacks are and ensure that action is taken to protect, and to prosecute.

And we can model within our organisations, and in our relationships with other charities and organisations, a mature awareness and appreciation of difference.

Including through the ability to disagree respectfully, to seek to persuade those who have different views, rather than to attack them.

Leaders in many charities face eye-wateringly difficult decisions. Notably around how best to apply dwindling resources in the face of demand that keeps growing in complexity and scale.

Those making such decisions need and deserve respect and support.

From all of us:

From within their organisations, from peers in other charities, from those impacted by decisions.

From a wider public discourse that tolerates nuance and accepts that sometimes difficult decisions cannot be avoided, and a charity stuck between a rock and a hard place is going to incur scrapes and bruises.

So rather than criticising or fault-finding, let's try offer each other solidarity and the benefit of the doubt.

The Commission's role, in all these contexts, is to remain steady, calm, law-based and unflappable. To be, in a sense, boring. Not to rise to bait, from whichever direction it comes from.

We must be alert to the risk of being weaponised by those who seek regulatory involvement as a means to reverse or second guess validly made decisions.

And we must support trustees, so long as they have followed principles of good governance, even if the outcomes of some of their decisions are unpopular with some within or beyond the charity.

We are, as an organisation, over 170 years old. We regulate a sector that was formed through the 1601 Statute of Elizabeth. We should demonstrate that with age comes wisdom, including the wisdom to learn from our mistakes.

Role of the Commission in upholding the social contract

Which brings me, finally, to a wider reflection on the role of the Charity Commission in promoting and upholding the social contract of charity.

I've mentioned the importance of our guidance, and of resisting being weaponised by those with axes to grind – within or beyond a charity.

But of course the Commission also has a central role in publicly tackling wrongdoing or serious mistakes when they arise.

It is vital that we retain both the courage and the resources to do this effectively, in line with the law.

Not only to safeguard individual charities and their resources from harm and misuse.

But to protect the wider sector against the potential loss of public trust and confidence.

This is not a new problem. Social contracts around shared goods have always depended on a balance between trust and enforcement.

I am mindful of the work of the political economist Elinor Ostrom, who wrote about ways in which communities can protect and govern common pool resources – land, fisheries etc.

She argued against a then prevailing view that commons – which are, I would argue, types of social contracts – would inevitably be misused and mismanaged unless they were privatised or centralised.

But she was also clear that, to survive, there must be visible, proportionate action when commons were misused, when rules were breached.

The Commission is a risk-based regulator – we have a responsibility to use our resources where they make the biggest difference.

But that does not mean that we only care about problems in the largest charities, or the most visible and public concerns.

We must continue to show that those who misuse or neglect the common treasure of charity will be challenged in a way that is proportionate, and fair.

Conclusion

I hope I have made clear that I believe the charity status is a social contract, a shared treasure, that we all have a responsibility towards, and from which we all gain.

Where trust, legitimacy, tax privileges, and support are freely given by citizens as a reflection of confidence that the contract is being honoured. Because charity is special, and distinct, unlike any other kind of organisation in important ways.

With the support of dedicated trustees such as yourselves, I have every belief that this a common good that we can protect for the next generation.

Thank you for that work, and thank you again for having me here, and hearing me out.

<https://www.gov.uk/government/speeches/registered-charity-status-a-social-contract>